

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2139.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	May 25, 2004
DATE OF REPORT:	June 18, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 15, 2004

COMPLAINT ISSUES:

Whether the Indianapolis Public Schools violated:

511 IAC 7-22-2 by failing to provide the parent with prior written notice when the school proposed or refused to initiate or change the evaluation or the special education placement of the student.*

511 IAC 7-25-7 by failing to conduct an additional evaluation and convene the case conference committee (CCC) within 60 instructional days of the date of written parental consent for the evaluation.

511 IAC 7-27-4(a)(3) by failing to convene a CCC meeting at the request of the parent.

511 IAC 7-25-6 by failing to conduct a reevaluation within 36 months of the previous evaluation.

511 IAC 7-25-5(c) by failing to take one of the requisite actions within 10 business days of the parent's request for an independent educational evaluation (IEE), either providing the parent with written notice that the IEE would be at public expense or initiating a due process hearing to establish that the school's evaluation was appropriate.

511 IAC 7-27-6(a)(2) by failing to include measurable annual goals and short-term objectives in the student's individualized education program (IEP).

* During the course of the investigation, the Complainant narrowed the scope of the first issue to prior written notice of placement. Prior written notice of evaluation is not in issue in this complaint.

FINDINGS OF FACT:

1. The Student is 11 years old and is eligible for special education and related services due to autism spectrum disorder and communication disorder.
2. The Student's case conference committee (CCC) convened on February 4, 2004, to develop, review, or revise the Student's individualized education program (IEP). The Case Conference Report (CCR) of February 4, 2004, documents that the School agreed to the Parent's request for an additional evaluation. The CCR also documents the placement options considered and selected. Although the reasons given are brief (Part Time "is too restrictive at this time for [the Student's] progress at this time"), the proposed services/placement (Sections 17, 18, and 19 of the IEP) maintained the pre-existing services/placement. The CCR documents (Sections 4, 5, 6, and 24) the evaluations, tests, records, and reports as well as other relevant factors that the School used as a basis for the proposed

services/placement. The Parents acknowledge receipt of the Notice of Procedural Safeguards and do not allege a failure to meet the requirements of 511 IAC 7-22-2(d)(5), (6), (7), (8), or (9).

3. Prior to the February 4, 2004, CCC meeting, on or about January 5, 2004, the Parents submitted a 7-page list of concerns related to the scope of the Student's re-evaluation, the Student's educational needs, and possible services and accommodations. The CCR does not document that the Parents' concerns were addressed during the CCC meeting, nor does the CCR incorporate the School's reasons for refusing to incorporate the Parents' suggestions into the IEP. As an illustration, the Parents' 7-page letter requested that the Student be allowed to print rather than use cursive writing. The IEP includes a short-term objective addressing cursive writing, but does not include a written statement of the reason(s) for refusing to take the action requested by the Parents.
4. On February 9, 2004, the Parents sent to the teacher of record (TOR) a statement of concerns, with a request to add the statement to the IEP. While the letter dealt in part with evaluation issues, the letter also requested that reading goals, objectives, and benchmarks be added to the Student's IEP. Prior to the filing of this Complaint, the School did not respond in writing to this letter from the Parents, nor did the School reconvene the CCC to consider additional goals.
5. On April 17, 2004, the Parents again wrote to the TOR regarding additional testing and suggested changes to the Student's IEP. In this letter the Parents revoked consent for the IEP, requested a CCC meeting, and also requested prior written notice of the School's decisions regarding various matters discussed in this and previous letters.
6. The TOR and the Parent have met on various occasions in parent-teacher conferences. The Parents have made written requests for prior written notice of the School's decisions regarding matters discussed in these parent-teacher conferences.
7. On November 12, 2003, the Parents wrote to the TOR requesting the administration of a non-verbal IQ test and certain other testing instruments, as additions to the previously-agreed scope of re-evaluation. The testing contemplated by the Triennial Re-evaluation Plan had been completed by the time the Parents' letter of November 12 was received. In a follow-up letter dated December 12, 2003, the Parents offered to sign a permission-to-evaluate form or, in the alternative, asked that their follow-up letter be treated as consent for evaluation. The School acknowledges receipt of both letters, but because the letters referred expressly to the triennial re-evaluation, the School did not recognize the December 12th letter as a request for an additional evaluation.
8. On June 2, 2004, the Student's CCC reconvened to consider the additional evaluation. The School acknowledges that the CCC was not reconvened within 60 instructional days. The School treated January 13, 2004, as the first day of the 60-day time period. Using the alternative calendar of the (year-round) school the Student attends, the School calculated that the 60th instructional day from January 13, 2004, was April 29, 2004. Using the same alternative calendar, the 60th instructional day from December 12, 2003, was April 20, 2004.
9. On March 19, 2004, the Parent made a written request for a CCC meeting, expressing the expectation that the CCC would meet within a week or two following spring break. [School resumed April 12, 2004, after a 3-week break from March 19, 2004, through April 11, 2004.] During the week of April 12, 2004, the Parent and the TOR had a conversation regarding reconvening the CCC. The School suggested waiting until the additional testing had been completed. By letter dated April 17, 2004, and received April 20, 2004, the Parents for the second time requested a meeting of the CCC. On May 10, 2004, the Parents sent the third written request for a CCC meeting. On May 11, 2004, the TOR updated the Parents about the status of the additional testing and suggested the possibility of a CCC meeting during

the last week of May or first week of June, 2004, if the Parents wished to meet before the report of the additional evaluation was ready. On May 24, 2004, the Parents delivered a letter to the office of the local director of special education (Director), reiterating the request for a CCC meeting.

10. The Student's CCC reconvened on June 2, 2004. The School's explanation for the delay is that the Parent requested to have the Director present at the meeting. The Parent does not recall making this request, although the Parents' letter of January 5, 2004, did request that the Director "or her designee" attend the CCC meeting that was held February 4, 2004, and the letters requesting CCC meetings were sent to the Director as well as the TOR.
11. On January 29, 2003, the Student's case conference committee (CCC) developed a re-evaluation plan based upon reports from the Parent, teacher, and service providers. The CCC decided that the Student continued to be eligible for special education/related services, but additional information was needed for educational programming. Specifically, the CCC decided to assess achievement, speech or language, and adaptive behavior. On January 29, 2003, the Parent provided written consent for a re-evaluation as described within the Triennial Evaluation Plan. The re-evaluation was due to be completed in the month of December, 2003.
12. By mid-October, 2003, testing/assessment and classroom observations had been conducted, except for the speech/language evaluation. On December 19, 2003, the multidisciplinary evaluation team (M.E.T.) held its summary meeting and completed the M.E.T. Report. It is the School's practice to treat the summary meeting date as the completion date of a re-evaluation. The M.E.T. Report includes results and interpretation/analysis of more than one achievement test, an adaptive behavior inventory, classroom observations by the TOR, and a speech/language evaluation, together with a summary by the M.E.T.
13. By letter dated January 3, 2004, the Parents notified the School of their disagreement with the M.E.T. Report and requested an independent educational evaluation (IEE). The School received the letter on or about January 13, 2004.
14. On or about January 13, 2004, the School responded by telephone to the Parents' request(s) for additional evaluation and an IEE. The School offered to conduct a non-verbal IQ test, in lieu of an IEE. The Parents agreed to the School's suggestion. The Parent acknowledges (and the letter of complaint confirms) that the Parents chose not to pursue the request for an IEE.
15. On June 7, 2004, the School received the Parents' renewed request for an IEE. On the same day, the School responded by letter agreeing to accept financial responsibility for an IEE, suggesting an evaluator, and assuring the Parent that the Parent may select a different evaluator. The Parent acknowledges receipt of the School's response within 10 business days of the request for an IEE.
16. On February 4, 2004, the Student's CCC convened to consider the re-evaluation and to develop, review, and revise the Student's individualized education program (IEP). The School acknowledges that the annual goals developed at that time were not measurable goals.
17. When the CCC reconvened on June 2, 2004, the CCC developed three new/revised annual goals, including a reading comprehension goal. The revised goals utilize grade levels in combination with percentages to describe predicted outcomes ("... will ... understand what is read at the 4.5 grade level with 75% after 20 weeks"). The School acknowledges that the unchanged Communication-Language goal (".... will improve language skills, including vocabulary, auditory processing and pragmatics.") remains non-measurable.

CONCLUSIONS:

1. Although Finding of Fact #2 indicates that the School provided prior written notice as to some matters of services/placement, Finding of Fact 3 indicates that the written report of the February 4, 2004, CCC meeting does not contain prior written notice of all decisions made with respect to matters raised by the Parents. Findings of Fact #4, #5, and #6 indicate that the Parent sought prior written notice of decisions made (or alleged to be made) outside the CCC process. When decisions involve services/placement and other IEP components, 511 IAC 7-27-4(c) requires the use of the CCC process, and the written report of the CCC meeting, as described in 511 IAC 7-27-5(a) and (b), incorporates the prior written notice requirements of 511 IAC 7-22-2(d). Therefore, as to matters raised prior to and during the February 4, 2004 CCC meeting, a violation of 511 IAC 7-22-2(d) occurred. However, as to matters raised after February 4, 2004, no violation of 511 IAC 7-22-2(d) occurred.
2. Findings of Fact #7 and #8 indicate that the School did not conduct the additional evaluation and convene the case conference committee (CCC) within 60 instructional days of the date the written parental consent was received by certified personnel. Therefore, a violation of 511 IAC 7-25-7 occurred. However, Finding of Fact #8 also indicates that Student-specific corrective action has been taken.
3. Findings of Fact # 9 and #10 indicate that the School failed to convene a CCC meeting at the request of the Parent. Although Article 7 does not specify a timeline for convening the CCC upon the request of a teacher, parent, or administrator, Finding of Fact #8 indicates that in this instance failing to convene the CCC by April 20, 2004, was non-compliant and, therefore, constituted an inordinate delay. Therefore, a violation of 511 IAC 7-27-4(a)(3) occurred.
4. Findings of Fact #11 and #12 indicate that the Student's re-evaluation, as contemplated by the Triennial Evaluation Plan, was conducted within 36 months of the previous evaluation. Therefore, no violation of 511 IAC 7-25-6 occurred.
5. Findings of Fact #13 and #14 indicate that, as of the date the Complaint was filed, there was no pending request for an independent education evaluation (IEE). Further, Finding of Fact #15 indicates that, when a request for an IEE was subsequently received, the School provided a timely written response. Therefore, no violation of 511 IAC 7-25-5(c) occurred.
6. Finding of Fact #16 indicates that, as of the date the Complaint was filed, the Student's individualized education program (IEP) did not contain a statement of measurable annual goals that describe what the Student can be expected to accomplish within a 12-month period. Further, Finding of Fact #17 indicates that the Student's IEP continues to contain one annual goal that is not measurable. Therefore, a violation of 511 IAC 7-27-6(a)(2) occurred. However, Finding of Fact #17 indicates that corrective action has been taken with respect to 3 annual goals.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

By September 10, 2004, Indianapolis Public Schools shall notify administrators and special education personnel that:

- (a) Decisions regarding IEP components are to be made through the case conference committee (CCC) process and documented in the written report of the CCC meeting, which must include the

components listed in 511 IAC 7-27-5 and 511 IAC 7-22-2(d) including reasons for refusing action(s) requested by parents.

- (b) An additional evaluation must be conducted and the case conference committee convened within 60 instructional days of the date that written parental consent is received by certified personnel.

The notification may consist of a memorandum, a hand-out at an inservice training, or other mode of communication including an email message.

By September 10, 2004, Indianapolis Public Schools shall reconvene the Student's case conference committee (CCC) to revise the Communication-Language annual goal. The CCC may consider other matters at that meeting, including the report of the independent educational evaluation (IEE), if available. If the Parent wishes to postpone the CCC meeting until the IEE report is available, Indianapolis Public Schools shall contact the complaint investigator by telephone or email, to request an extension of time for compliance.

Documentation of compliance shall be submitted to the Indiana Department of Education, Division of Exceptional Learners, by September 17, 2004 (or, if applicable, the extended date authorized by the complaint investigator).